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 2 LAW CORPORATION  
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 4 DIANE SIDD-CHAMPION, ESQ. #78140  
 5 595 Market Street, Suite 2200  
 6 San Francisco, CA 94105  
 7 Telephone: (415) 882-2992

8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT  
 10 NORTHERN DISTRICT OF CALIFORNIA

11 BOARD OF TRUSTEES OF THE PLUMBERS	)	<b>No. CV 08 1170 JCS</b>
12 AND STEAMFITTERS MANAGED HEALTH CARE	)	
13 TRUST FUND; BOARD OF TRUSTEES OF THE	)	<b>DECLARATION OF LORI A. NORD</b>
14 U.A. LOCAL NO. 343 PENSION TRUST	)	<b>REGARDING STATEMENT OF</b>
15 FUND; BOARD OF TRUSTEES OF THE U.A.	)	<b>AMOUNTS OWED, AND AWARD OF</b>
16 LOCAL NOS. 343 AND 355 DEFINED	)	<b>ATTORNEY'S FEES</b>
17 CONTRIBUTION PLAN; BOARD OF TRUSTEES	)	<b>(F.R.C.P. 55 b)(2), L.R.</b>
18 OF THE U.A. LOCAL NO. 343 JOURNEYMAN	)	<b>230)</b>
19 AND APPRENTICE TRAINING TRUST FUND;	)	
20 AND BOARD OF TRUSTEES OF THE U.A.	)	<b>Date: July 11, 2008</b>
21 LOCAL NO. 343 LABOR-MANAGEMENT	)	<b>Time: 9:00 A.M.</b>
22 COOPERATION COMMITTEE TRUST FUND,	)	<b>Place: Courtroom A,</b>
	)	<b>15th Floor</b>
23 Plaintiffs,	)	
	)	
24 v.	)	
	)	
25 RAMCON COMPANY, INC., A CALIFORNIA	)	
26 CORPORATION	)	
	)	
27 Defendant.	)	
	)	

28 I, LORI A. NORD, declare as follows:

1. I am one of the attorneys for the plaintiffs in the above-entitled action and am familiar with all proceedings in this action as well as the facts on which the action is based.

2. Attached hereto as Exhibit "A," "B," "C," "D" "E" and "F" are true and correct copies of the First Amendment to the Plumbers

1 and Steamfitters Managed Health Care Trust (Exhibit A) and Section  
2 3.07 of the Trust Agreement (Exhibit B), the First Amendment and  
3 Section 3.07 to the U.A. Local No. 343 Pension Trust Agreement  
4 (Exhibits C & D), the First Amendment to the U.A. Local No. 343  
5 Apprenticeship Training Fund Trust Agreement (Exhibit E), and  
6 Article I, Section 8 of the U.A. Local No. 343 Labor-Management  
7 Cooperation Committee Trust Agreement (Exhibit F). These provisions  
8 provide for the assessment of liquidated damages and interest on  
9 delinquent contributions and for the award of attorneys' fees and  
10 costs incurred in collection cases such as these by plaintiffs.

11 3. Attached hereto as (Exhibits "G & "H") are true and  
12 correct copies of Article IV, § 4.4.04 of the Plumbers and  
13 Steamfitters Managed Health Care Trust Fund Trust Amended Trust  
14 Agreement (Exhibit "G") and Article IV, § 4.4.04 of the U.A. Local  
15 343 Pension Trust Fund (Exhibit H). In addition to the authority  
16 provided by ERISA to audit employers, these provisions provide the  
17 plaintiffs with authority to audit individual signatory employers,  
18 such as the defendant, to determine whether such employer is  
19 accurately reporting and paying all contributions owing to the  
20 plaintiffs.

21 4. I have investigated the facts of this case and certify  
22 that there is a good claim for relief against defendant. To the  
23 best of my information and belief, defendant Ramcon Company, Inc.,  
24 is not in the military service of the United States.

25 5. As of March 20, 2008, the defendant owed plaintiffs  
26 \$14,589.56 in fringe benefits, liquidated damages and interest.  
27 (See Exhibit "1" to the Amended Complaint). Interest continues to  
28 accrue on that sum from March 20, 2008 until paid at the rate of

1 twelve percent (12%) per annum, or \$4.80 per day, under the terms of  
2 the Trust Agreements and as mandated by 29 USC § 1132 (g) (2). The  
3 interest which has accrued on that sum through May 30 2008 is  
4 \$335.76, making the total due as of this date \$14,925.32.

5 6. Plaintiffs have incurred the following costs in connection  
6 with this lawsuit:

7 Court filing fee : \$350.00

8 Fee for service of Complaint: 100.00

9 Total: \$450.00

10  
11 7. Plaintiffs have also incurred, and are continuing to incur  
12 attorneys' fees in connection with the collection of fringe benefits  
13 owed by defendant. Attorneys' fees are assessable under 29 U.S.C.  
14 § 1132(g), which requires award of reasonable attorneys' fees and  
15 costs of the action to a trust fund or employee benefit plan which  
16 has a judgment in its favor.

17 8. I was admitted to practice in 1979, and have handled cases  
18 involving fringe benefit contributions since April 1980. Diane Sid-  
19 Champion was admitted to practice in 1977 and has handled these  
20 types of cases since 1986. My firm's current customary hourly  
21 charge for these types of cases is currently \$240.00 - \$250.00 per  
22 hour for our attorney time.

23 9. Plaintiffs were or will be billed \$240.00 an hour for 7.9  
24 hours of attorney time for our services in this case through May 30,  
25 2008. This time was incurred in communications and correspondence  
26 with the defendant, clients, auditor, Secretary of State, California  
27 Contractors State License Board and Court as well as drafting all  
28 pleadings in the case. Plaintiffs have or will be billed a total

1 of \$1,896.00 for fees incurred through May 30, 2008. The reasonable  
2 amount of attorneys' fees incurred by Plaintiffs in this case is  
3 thus \$1,896.00.

4  
5 I declare under penalty of perjury that to the best of my  
6 knowledge the foregoing is true and correct. Executed on May 30,  
7 2008 in San Francisco, California.

8  
9 By: \_\_\_\_\_

10 LORI A. NORD  
11 Attorneys for Plaintiffs  
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**PLUMBERS AND STEAMFITTERS MANAGED HEALTH CARE TRUST FUND  
TRUST AGREEMENT**

**FIRST AMENDMENT**

It is hereby agreed by the parties hereto that Section 3.06 of Article III of the Trust Agreement be amended to read in its entirety as follows:

**3.06 Liquidated Damages and Interest**

Insofar as the regular and prompt payment of Employer Contributions are concerned, the parties recognize that time is of the essence. The parties further recognize that the actual damages to the Trust Fund for any delay in, or default of, an Employer in making an Employer Contribution would be extremely difficult, if not impossible, to determine. The parties therefore agree that if an Employer fails to make an Employer Contribution on or before the due date established by the Trustees, there shall be added, as liquidated damages, and not as a penalty, 10% of the Contributions due, which amount shall be due and payable on the date that the Contributions were due. In addition, all late contributions and liquidated damages shall bear interest at a rate of 12% per annum, from the date each was due, until paid. The Employer shall remain liable for the payment of the liquidated damages and interest, even if it makes late full payment of the required fringe benefit contributions, unless waived by the Board of Trustees.

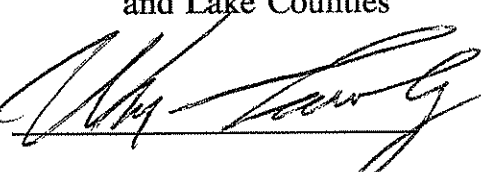
The parties further agree that if the Trust Fund files a legal action to collect unpaid Contributions or unpaid liquidated damages, the liquidated damages for any Contributions still unpaid on the date the legal action is filed shall be increased to 20% of the contributions due. For any late Contribution to be deemed paid prior to the filing of a legal action, the Trust Fund must have received cash, a cashier's check, a certified check, or a money order, or, in the case of an ordinary check, received actual payment into the Trust Fund's account from the Employer's bank by the end of the last business day before the day on which the lawsuit is filed. Notwithstanding any provisions to the contrary herein, or any provision in any Collective Bargaining Agreement which provides for contributions to this Fund, this Section shall supersede and govern the assessment and collection of liquidated damages, interest and collection costs due to this Fund.

In addition to the foregoing, it shall not be a violation of any Collective Bargaining Agreement for the Union to refuse to man a job or to withdraw employees from the job or jobs of a delinquent Individual Employer.

IN WITNESS THEREOF, the parties hereto have executed, by their officers or duly authorized representatives, this Amendment on the dates indicated below.

Plumbing, Heating, and Cooling  
Contractors of Napa, Solano  
and Lake Counties

By



Date

1-24-95

U. A. Local No. 343

By

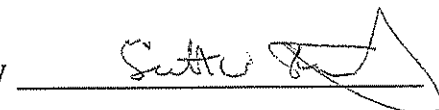


Date

2-2-95

Mechanical Contractors Association  
of Northern California, Inc.

By



Date

1-29-95

butions and liquidated damages shall bear interest at a rate of 12% per annum, from the date each was due, until paid. The Employer shall remain liable for the payment of the liquidated damages and interest, even if it makes late full payment of the required fringe benefit contributions, unless waived by the Board of Trustees.

The parties further agree that if the Trust Fund files a legal action to collect unpaid Contributions or unpaid liquidated damages, the liquidated damages for any Contributions still unpaid on the date the legal action is filed shall be increased to 20% of the contributions due. For any late Contribution to be deemed paid prior to the filing of a legal action, the Trust Fund must have received cash, a cashier's check, a certified check, or a money order, or, in the case of an ordinary check, received actual payment into the Trust Fund's account from the Employer's bank by the end of the last business day before the day on which the lawsuit is filed. This Section shall supersede any provision in a Collective Bargaining Agreement permitting the collection of any amounts in excess of the amount permitted under this Section.

In addition to the foregoing, it shall not be a violation of any Collective Bargaining Agreement for the Union to refuse to man a job or to withdraw employees from the job or jobs of a delinquent Individual Employer.

### 3.07 Actions to Collect Delinquent Obligations

If any Employer is delinquent in the making of Employer Contributions or the payment of any other obligations to the Trust, the Board of Trustees may take such legal or other action as they see fit to enforce collection. In such event, the Employer shall be liable for all reasonable expenses incurred by the Board of Trustees in taking such action, including but not limited to: all reasonable expenses incurred in preparation for a lawsuit, including accounting fees; all legal costs, including court costs and the cost of attachment bonds; and attorneys' fees.

## **ARTICLE IV - BOARD OF TRUSTEES**

### PART I GENERAL PROVISIONS

#### 4.1.01 Administration by the Board of Trustees

The Trust Fund shall be administered by the Board of Trustees appointed by the parties. The Trustees are expressly designated as named fiduciaries, and shall have exclusive authority and discretion, except as limited by the Collective Bargaining Agreements, to control and manage the operation and administration of the Fund and to establish and administer the Health and Welfare Plans.

#### 4.1.02 Selection of Trustees

(A) The Board of Trustees shall consist of two (2) Employer Trustees and two (2) Employee Trustees. The designation of a Trustee as Employer or Employee is made only to comply with Section 302(c) of the Labor Management Relations Act of 1947, and shall in no way be interpreted to permit the Trustees to act as an agent of the Union, Associations, Individual Employers, or other entity, in derogation of their duty to act solely in the interest of the participants and beneficiaries of the Trust Fund.



**U.A. LOCAL NO. 343 PENSION TRUST FUND  
TRUST AGREEMENT**

**FIRST AMENDMENT**

It is hereby agreed by the parties hereto that Section 3.06 of Article III of the Trust Agreement be amended to read in its entirety as follows:

**3.06 Liquidated Damages and Interest**

Insofar as the regular and prompt payment of Employer Contributions are concerned, the parties recognize that time is of the essence. The parties further recognize that the actual damages to the Trust Fund for any delay in, or default of, an Employer in making an Employer Contribution would be extremely difficult, if not impossible, to determine. The parties therefore agree that if an Employer fails to make an Employer Contribution on or before the due date established by the Trustees, there shall be added, as liquidated damages, and not as a penalty, 10% of the Contributions due, which amount shall be due and payable on the date that the Contributions were due. In addition, all late contributions and liquidated damages shall bear interest at a rate of 12% per annum, from the date each was due, until paid. The Employer shall remain liable for the payment of the liquidated damages and interest, even if it makes late full payment of the required fringe benefit contributions, unless waived by the Board of Trustees.

The parties further agree that if the Trust Fund files a legal action to collect unpaid Contributions or unpaid liquidated damages, the liquidated damages for any Contributions still unpaid on the date the legal action is filed shall be increased to 20% of the contributions due. For any late Contribution to be deemed paid prior to the filing of a legal action, the Trust Fund must have received cash, a cashier's check, a certified check, or a money order, or, in the case of an ordinary check, received actual payment into the Trust Fund's account from the Employer's bank by the end of the last business day before the day on which the lawsuit is filed. Notwithstanding any provisions to the contrary herein, or any provision in any Collective Bargaining Agreement which provides for contributions to this Fund, this Section shall supersede and govern the assessment and collection of liquidated damages, interest and collection costs due to this Fund.

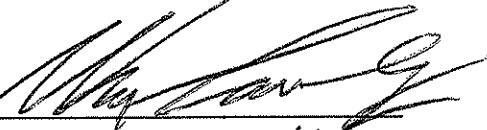
In addition to the foregoing, it shall not be a violation of any Collective Bargaining Agreement for the Union to refuse to man a job or to withdraw employees from the job or jobs of a delinquent Individual Employer.




IN WITNESS THEREOF, the parties hereto have executed, by their officers or duly authorized representatives, this Amendment on the dates indicated below.

Plumbing, Heating, and Cooling  
Contractors of Napa, Solano  
and Lake Counties

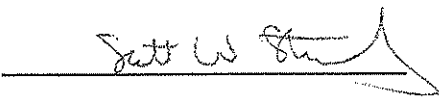
U. A. Local No. 343


By   
Date 1-24-95

By   
Date 2-14-95


Mechanical Contractors Association  
of Northern California, Inc.

U. A. Local No. 355

By   
Date 1-29-95

By   
Date 2-13-95

Landscape Contractors Council  
of Northern California

By   
Date 2-3-95

order, or, in the case of an ordinary check, received actual payment into the Trust Fund's account from the Employer's bank by the end of the last business day before the day on which the lawsuit is filed. This Section shall supersede any provision in a Collective Bargaining Agreement permitting the collection of any amounts in excess of the amount permitted under this Section.

In addition to the foregoing, it shall not be a violation of any Collective Bargaining Agreement for the Union to refuse to man a job or to withdraw employees from the job or jobs of a delinquent Individual Employer.

### 3.07 Actions to Collect Delinquent Obligations

If any Employer is delinquent in the making of Employer Contributions or the payment of any other obligations to the Trust, the Board of Trustees may take such legal or other action as they see fit to enforce collection. In such event, the Employer shall be liable for all reasonable expenses incurred by the Board of Trustees in taking such action, including but not limited to: all reasonable expenses incurred in preparation for a lawsuit, including accounting fees; all legal costs, including court costs and the cost of attachment bonds; and attorneys' fees.

## **ARTICLE IV - BOARD OF TRUSTEES**

### PART I GENERAL PROVISIONS

#### 4.1.01 Administration by the Board of Trustees

(a) The Trust Fund shall be administered by the Board of Trustees appointed by the parties. The Trustees are expressly designated as named fiduciaries, and shall have exclusive authority and discretion, except as limited by the Collective Bargaining Agreements, to control and manage the operation and administration of the Fund and to establish and administer the Pension Plans.

(b) The power to administer the Trust Fund shall be divided among the Trustees as follows:

1. All matters of concern to the administration of the Fund's Defined Benefit Plan, and of any plan to which only employees employed under Collective Bargaining Agreements of U.A. Local No. 343 participate, shall be subject to the control of the Board as a whole, except that the Trustee appointed by Local Union No. 355 and the Trustee appointed by the Landscape Contractors Council of Northern California shall have no voice or vote on such matters. However, if Local Union No. 355 enters into collective bargaining agreements calling for contributions to be made to the Defined Benefit Plan, and contributions are made to the Trust Fund pursuant to such a collective bargaining agreement, the Trustee appointed by Local Union No. 355 and the Trustee appointed by the Landscape Contractors Council of Northern California shall have a voice and a vote with respect to that Plan.

2. All matters of concern to the administration of the Fund's Defined Contribution Plan, shall be subject to the control of the Board as a whole and the Trustee appointed by Local Union No. 355 and the Trustee appointed by the Landscape Contractors Council of Northern California shall have a voice and a vote on such matters.

U.A. LOCAL NO. 343 APPRENTICESHIP TRAINING TRUST FUND  
TRUST AGREEMENT  
(As revised October 10, 1978)  
FIRST AMENDMENT

It is hereby agreed by the parties hereto that in order to comply with Section 502(g)(2) of Employees Retirement Income Security Act of 1974, as amended, Section 8 of Article II of the Trust Agreement be, and the same is hereby amended to read in its entirety as follows:

Section 8.

Insofar as payment of contributions by the Individual Employers and Unions into this Fund are concerned, time is of the essence. The parties nevertheless recognize and acknowledge that it would be extremely difficult if not impossible to fix the actual expense and damage to this Fund and to Covered Employees which would result from the failure of an Individual Employer to make his monthly payment of contributions promptly and in full within the time provided. It is, therefore, agreed that if the Individual Employer fails to pay his contributions to the Fund in full on or before the due date fixed by the Trustees, there shall be added by way of liquidated damages, and not as a penalty, ten (10%) percent of the contributions due. If the Individual Employer should thereafter fail to pay the contributions in full, including the liquidated damages, before the last business day of the calendar month next following the due date, the liquidated damages on all outstanding principal indebtedness of that Individual Employer shall be increased to twenty (20%) percent. In addition to the liquidated damages, the contributions due shall bear interest at the rate of twelve (12%) percent per annum until paid.

In addition to the contributions due and the liquidated damages provided for in this Section, there shall be added all reasonable expenses incurred by the Fund in the collection of the same, including but not limited to reasonable attorney's fees, accounting costs, and costs of action.

It shall not be a violation of any Collective Bargaining Agreement for the Union to refuse to man any job or to withdraw employees from the job or jobs of any delinquent Individual Employer.

IN WITNESS WHEREOF, the parties hereto have subscribed or caused to be subscribed by their Officers or Representatives

U.A. Local No. 343 Apprentice Training Trust Fund  
First Amendment to First Amended Trust Agreement (Rev. 10/10/78)

thereunto duly authorized, on this 31<sup>st</sup> day of MARCH, 1988.

PLUMBING, HEATING AND COOLING  
CONTRACTORS ASSOCIATION OF  
NAPA, SOLANO AND LAKE COUNTIES

U.A. LOCAL UNION NO. 343

By Richard J. Stegman

By Michael J. Stegman

Fund or with respect to the Labor-Management Cooperation Plan hereinafter provided, except to the extent that any Individual Employer may be required to make contributions to the Fund with respect to this own individual operations, or to the extent he may incur liability as a trustee as hereinafter provided. The liability of any Individual Employer to the Fund, or with respect to the Labor-Management Cooperation Plan hereinafter provided, shall be limited to the payments required by the collective bargaining agreement with respect to his or its individual operations, and in no event shall he or it be liable or responsible for any portion of the contributions due from other Individual Employers with respect to the operations of such employers. The Individual Employers shall not be required to make any further payments or contributions to the cost of operation of the Fund or of the Labor-Management Cooperation Plan, either in connection with the administration of the trust hereby established or otherwise, except as provided in a collective bargaining contract or this Trust Agreement.

Section 5. Neither the Employers, or any Individual Employer, nor the Union or any individual employee shall be liable or responsible for any debts, liabilities or obligations of the trust or the trustees.

Section 6. Neither the Union or any member, officer, agent, employee or committee member of the Union, shall be liable to make contributions into the Fund or be under any other liability to the Fund or with respect to the Labor-Management Cooperation Plan hereinafter provided, except to the extent that he may incur liability as a trustee as hereinafter provided, or as otherwise provided in this Trust Agreement.

Section 7. Payments into the Fund shall be due and payable at the principal office of the Board and Fund in such installments and at such times as the Board shall from time to time direct. Each payment or installment shall be accompanied by a report in such a form as the Board may from time to time direct.

Section 8. Insofar as payments by the Individual Employers and Union into this Fund are concerned, time is of the essence. The parties nevertheless recognize and acknowledge that it would be extremely difficult if not impossible to fix the actual expense and damage to this Fund and to the Plan which would result from the failure of an Individual Employer to make his monthly payments promptly and in full within the time provided. It is, therefore, agreed that if the individual Employer fails to make his payments to the Fund in full on or before the due date fixed by the Trustees, there shall be added by way of liquidated damages, and not as a penalty, twenty (20%) percent of the payments due. In addition to the liquidated damages, the payments due shall bear interest at the rate of twelve (12%) percent per annum until paid.

In addition to the payments due and the liquidated damages provided for in this Section, there shall be added all reasonable expenses incurred by the Fund in the collection of the same including but not limited to reasonable attorney's fees, accounting costs, and costs of action.

## **ARTICLE II - BOARD OF TRUSTEES**

**Section 1.** The Fund shall be administered by a Board of Trustees which shall consist of four (4) Trustees, of whom two (2) shall represent the Employer Trustors and two (2) the Employee Trustors. Of the two (2) Trustees representing Employers, one (1) shall be appointed by each of the two (2) participating Employer Associations. The two (2) Trustees representing employees shall be the Business Manager and Business Agent of U.A. Local Union No. 343. If for any reason Local 343 does not employ a Business Agent, the Business Manager of Local 343 shall appoint a second trustee from Local 343.

The Employer and the Union expressly designate the Trustees so appointed as fiduciaries who shall have exclusive authority and discretion acting as the Board of Trustees as hereinafter provided to control and manage the operation and administration of the Fund and the Labor-Management Cooperation Plan. Each of the Trustees expressly accepts designation as a fiduciary and as Trustee by written acceptance and signature of this Trust Agreement, and assumes the duties, responsibilities, and obligations of the Trustees as created and established by this Trust Agreement and under applicable law. Any Trustee named hereafter shall do likewise by signing the Trust Agreement or a written acceptance thereof in a form to be approved by and filed with the Board of Trustees.

**Section 2.** The Trustees shall select one of their number to act as Chairman of the Board of Trustees and one to act as Co-Chairman, to serve for such period as the Trustees shall determine. When the Chairman is selected from among the employee representatives, the Co-Chairman shall be selected from among the employer representatives and vice versa.

**Section 3.** Each Trustee shall serve until his death, resignation or removal from office.

**Section 4.** Any Trustee may resign at any time by serving written notice of such resignation upon the Chairman and Co-Chairman of the Board of Trustees at least fifteen (15) days prior to the date on which such resignation is to be effective.

**Section 5.** Any Trustee may be removed from his office at any time, for any reason, by the party or parties appointing him, by notice



#### 4.4.02 Finality of Decisions

Any decisions or determinations of the Board of Trustees, which are not inconsistent with this Agreement or with the Health and Welfare Plans, on any matter within their powers, including the adoption of any and all terms and provisions of the Health and Welfare Plans, and the rights of any Employee or any other person asserting a claim under a Plan, shall be final and binding upon all parties.

#### 4.4.03 Accounting of the Trust

The Board of Trustees shall maintain proper books of account and records of its administration of the Trust. The Board shall also cause an annual audit to be made of the Fund by a certified public accountant, a copy of which shall be furnished to the parties hereto and be available at the principal office of the Health and Welfare Trust for inspection by persons who have a legal interest in the Trust Fund. Copies of such statements shall be delivered to the Union, the Associations, and to each Trustee within five (5) days after they are prepared.

#### 4.4.04 Auditing of Employer Contributions

Upon notice in writing from the Board of Trustees or an authorized agent of the Board, each Employer shall permit any accountant appointed by the Board to enter upon his, her or its premises at a reasonable time during business hours, to examine and copy such books, records, or reports of such Employer as may be necessary to determine whether the employer is making full and prompt payment of all sums required to be paid by that Employer to the Fund. As the purpose of such an audit would be defeated if it were limited in any way, the Employer may not limit the scope of the audit to the records concerning those employees performing covered employment.

The parties agree that the following records are necessary for the completion of an audit pursuant to this section:

- (a) For a routine audit: the Employer's quarterly tax returns to the state and federal government, including California Form DE-3 and IRS Form 941; payroll journals; individual earnings records and time cards of all employees; general check register; reports of employee hours to all other trade unions and to all other employee benefit plans; and workers' compensation insurance reports for all employees.
- (b) Upon the accountant's certification that further records are necessary to complete an audit, any of the following documents as specified by the auditor and approved by the Board of Trustees: general ledger, bank statements, canceled checks, IRS Forms W-2, W-4, 1096, and 1099, cash receipts journal, financial statements, invoices, contracts, income tax returns, and any other records which the accountant deems necessary or relevant to complete the audit.

The cost of the audit shall be borne by the employer if the audit reveals that the Employer paid Contributions which were less than the amount due, by an amount equal to the lesser of \$500 or 5% of all contributions due for the period covered by the audit. Any Employer who cancels an audit without at least two working days notice, or who fails to provide the required documents, shall be liable for the costs caused by that delay or that failure whether or not the audit reveals that any further Contributions were due.



If an Employer refuses the accountant entry for the purposes of an audit, the Trust Fund may take legal action to compel entry, without regard to any grievance or arbitration procedure in a Collective Bargaining Agreement, and the Employer shall pay all the reasonable costs and legal fees incurred by the Trust Fund in compelling or obtaining such an audit.

#### 4.4.05 Insurance

The Board of Trustees is expressly empowered to purchase insurance, including fidelity bonds, to cover liability or losses occurring by reason of the act or omission of any individual Trustee, other fiduciary, or agent of the Trust Fund, and shall secure fidelity bonds for all fiduciaries and for all other people who handle money, as required by the laws of the United States; provided, however, that such insurance must permit recourse by the insurer against the Trustee or other fiduciary whose breach of a fiduciary obligation results in such loss or liability. Nothing herein shall be construed, however, to prohibit any Trustee or other person or entity in a fiduciary relationship under the Trust from purchasing insurance to cover liability for his or her own account; or the Union, Employers, or Associations from purchasing insurance to cover liability of persons who serve in a fiduciary capacity pursuant to appointment by them.

#### 4.4.06 Selection of an Administrator

The Board of Trustees may, but need not, employ a person or entity to act as Administrator of the Fund. Such Administrator shall have no power, express or implied, to establish, determine or interpret policy. The Board of Trustees may reasonably delegate their powers to the Administrator, to perform those tasks they deem necessary for the administration of the Trust.

#### 4.4.07 Selection of a Co-Trustee

The Board of Trustees may select a California Banking Institution which is a member of a Federal Reserve Bank or which is subject to the supervision of the Superintendent of Banks or the Comptroller of Currency to act as Co-Trustee, and shall negotiate an agreement with such Co-Trustee under the terms of which said Co-Trustee shall receive, on behalf of the Trust, all Employer Contributions payable by Employers of this Trust. The Board of Trustee may delegate appropriate fiduciary powers and duties to the Co-Trustee, including, but not limited to, the following powers: to be co-holder of title to any assets of the Trust; to make distributions from the Fund, pursuant to instructions from, or other authority granted by, the Board of Trustees; and to make investments for the Fund, pursuant to instructions from the Board of Trustees or from an investment manager selected by the Board of Trustees.

#### 4.4.08 Designated Powers of the Board of Trustees

In addition to any powers enumerated elsewhere in this Agreement, or granted by law, the Board of Trustees shall have the following powers:

- (a) To adopt, amend, and terminate Health and Welfare Plans within their sole discretion, in any manner not inconsistent with this Trust Agreement or the Collective Bargaining Agreements, and to interpret any and all terms of the Health and Welfare Plans;

more than one Plan, the assets of each shall be segregated, and applied only to the respective Plan and to a proportional share of common expenses in the administration of the Fund. The Pension Plans shall determine all matters necessary for the provision of pensions on retirement to participants and related benefits to beneficiaries, except those matters determined by a Collective Bargaining Agreement. The benefits provided in the Plans shall be limited to those which may be provided on an actuarially sound basis. The Pension Plans and all amendments and modifications thereof shall be set forth in writing, and signed by the Chairman and Co-Chairman. The Trustees are expressly empowered to amend or terminate the Plans or to adopt other plans, provided that such other plans are in full compliance with applicable federal laws.

#### 4.4.02 Finality of Decisions

Any decisions or determinations of the Board of Trustees, which are not inconsistent with this Agreement or with the Pension Plans, on any matter within their powers, including the adoption of any and all terms and provisions of the Pension Plans, and the rights of any Employee or any other person asserting a claim under a Plan, shall be final and binding upon all parties.

#### 4.4.03 Accounting of the Trust

The Board of Trustees shall maintain proper books of account and records of its administration of the Trust. The Board shall also cause an annual audit to be made of the Fund by a certified public accountant, a copy of which shall be furnished to the parties hereto and be available at the principal office of the Pension Trust for inspection by persons who have a legal interest in the Trust Fund. Copies of such statements shall be delivered to the Union, the Associations, and to each Trustee within five (5) days after they are prepared.

#### 4.4.04 Auditing of Employer Contributions

Upon notice in writing from the Board of Trustees or an authorized agent of the Board, each Employer shall permit any accountant appointed by the Board to enter upon his, her or its premises at a reasonable time during business hours, to examine and copy such books, records, or reports of such Employer as may be necessary to determine whether the employer is making full and prompt payment of all sums required to be paid by that Employer to the Fund. As the purpose of such an audit would be defeated if it were limited in any way, the Employer may not limit the scope of the audit to the records concerning those employees performing covered employment.

The parties agree that the following records are necessary for the completion of an audit pursuant to this section:

- (a) For a routine audit: the Employer's quarterly tax returns to the state and federal government, including California Form DE-3 and IRS Form 941; payroll journals; individual earnings records and time cards of all employees; general check register; reports of employee hours to all other trade unions and to all other employee benefit plans; and workers' compensation insurance reports for all employees.
- (b) Upon the accountant's certification that further records are necessary to complete an audit, any of the following documents as specified by the

auditor and approved by the Board of Trustees: general ledger, bank statements, canceled checks, IRS Forms W-2, W-4, 1096, and 1099, cash receipts journal, financial statements, invoices, contracts, income tax returns, and any other records which the accountant deems necessary or relevant to complete the audit.

The cost of the audit shall be borne by the employer if the audit reveals that the Employer paid Contributions which were less than the amount due, by an amount equal to the lesser of \$500 or 5% of all contributions due for the period covered by the audit. Any Employer who cancels an audit without at least two working days notice, or who fails to provide the required documents, shall be liable for the costs caused by that delay or that failure whether or not the audit reveals that any further Contributions were due. If an Employer refuses the accountant entry for the purposes of an audit, the Trust Fund may take legal action to compel entry, without regard to any grievance or arbitration procedure in a Collective Bargaining Agreement, and the Employer shall pay all the reasonable costs and legal fees incurred by the Trust Fund in compelling or obtaining such an audit.

#### 4.4.05 Insurance

The Board of Trustees is expressly empowered to purchase insurance, including fidelity bonds, to cover liability or losses occurring by reason of the act or omission of any individual Trustee, other fiduciary, or agent of the Trust Fund, and shall secure fidelity bonds for all fiduciaries and for all other people who handle money, as required by the laws of the United States; provided, however, that such insurance must permit recourse by the insurer against the Trustee or other fiduciary whose breach of a fiduciary obligation results in such loss or liability. Nothing herein shall be construed, however, to prohibit any Trustee or other person or entity in a fiduciary relationship under the Trust from purchasing insurance to cover liability for his or her own account; or the Union, Employers, or Associations from purchasing insurance to cover liability of persons who serve in a fiduciary capacity pursuant to appointment by them.

#### 4.4.06 Selection of an Administrator

The Board of Trustees may, but need not, employ a person or entity to act as Administrator of the Fund. Such Administrator shall have no power, express or implied, to establish, determine or interpret policy. The Board of Trustees may reasonably delegate their powers to the Administrator, to perform those tasks they deem necessary for the administration of the Trust.

#### 4.4.07 Selection of a Co-Trustee

The Board of Trustees may select a California Banking Institution which is a member of a Federal Reserve Bank or which is subject to the supervision of the Superintendent of Banks or the Comptroller of Currency to act as Co-Trustee, and shall negotiate an agreement with such Co-Trustee under the terms of which said Co-Trustee shall receive, on behalf of the Trust, all Employer Contributions payable by Employers of this Trust. The Board of Trustee may delegate appropriate fiduciary powers and duties to the Co-Trustee, including, but not limited to, the following powers: to be co-holder of title to any assets of the Trust; to make distributions from the Fund, pursuant